D.P.U./D.T.E. 96-100

Investigation by the Department of Telecommunications and Energy upon its own motion commencing a Notice of Inquiry/Rulemaking, pursuant to 220 C.M.R. §§ 2.00 et seq., establishing the procedures to be followed in electric industry restructuring by electric companies subject to G.L. c. 164.

ORDER PROPOSING REGULATIONS AND SOLICITING COMMENT

I. INTRODUCTION

In this Order, the Department of Telecommunications and Energy ("Department") proposes regulations to be promulgated pursuant to our authority set forth in the Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997 ("Act").[1] These regulations implement the intent and will of the Legislature manifest in the Act to bring the benefits of retail competition in the electricity generation market to all consumers beginning March 1, 1998. The Department solicits comment on the proposed regulations. In addition, pursuant to G.L. c. 30A, § 2, the Department seeks comment on the regulations governing licensing of competitive suppliers and electricity brokers that were promulgated as emergency regulations on January 9, 1998.

II. HISTORY OF THE PROCEEDING

On August 16, 1995, the Department issued its Order in Electric Industry Restructuring, D.P.U. 95-30, setting forth principles for a restructured electric industry and for the transition to a restructured electric industry. On March 15, 1996, the Department issued an Order commencing a Notice of Inquiry ("NOI")/Rulemaking to develop rules and regulations that would implement the principles established in D.P.U. 95-30. The scope of the NOI/Rulemaking covered developing a competitive electric generation market, including requirements for competitive suppliers. Order Commencing Notice of Inquiry ("NOI")/Rulemaking and Setting a Procedural Schedule, D.P.U. 96-100, at 5-6 (March 15, 1996). After notice and an opportunity for public comment, on May 1, 1996, the Department issued proposed rules accompanied by a detailed explanatory statement. Draft Rules and Explanatory Statement, D.P.U. 96-100 (May 1, 1996). Thereafter, the

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[1] An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protections Therein.

Department received two rounds of comments and conducted fifteen days of hearings focusing on issues raised by the Department's draft rules. In addition, the Department held sixteen public hearings around the Commonwealth.

On December 30, 1996, the Department concluded the first phase of our rulemaking proceeding by issuing Electric Industry Restructuring: Model Rules and Legislative Proposal, D.P.U. 96-100 (1996). The Model Rules were to govern the transition and to apply thereafter to the restructured electric industry. The Model Rules provided a regulatory framework for an efficient industry structure that would minimize long-term costs to consumers while maintaining the safety and reliability of electric services with minimum impact on the environment.

The Department delayed promulgation of final rules in deference to the Legislature, under whose delegation the Department acts. During 1997, the Legislature undertook a comprehensive review of electric restructuring, culminating in passage of the Act on November 25, 1997. The Department's Order in D.P.U. 96-100 anticipated that the Legislature might enact different principles; in which case, the Department would modify the final rules consistent with Legislative direction. Id. at 23. As anticipated, the Act requires the Department to implement its principles by promulgating rules and regulations on many of the same issues the Department included in our Model Rules.

On January 9, 1998, pursuant to G.L. c. 30A, § 2, the Department promulgated emergency regulations governing the licensing of competitive suppliers and electricity brokers. These emergency regulations were necessary for the public safety and general welfare given the need to allow new entrants to the electricity market a reasonable period to apply for and receive

licenses before March 1, 1998. In its Order promulgating the licensing regulations, the Department noted that, as emergency regulations, the licensing regulations are required to be reviewed within 90 days and anticipated comment on the regulations by January 30, 1998. Electric Industry Restructuring, D.P.U. 96-100, Order Adopting Emergency Regulations at 1, 7 (1998). The Department's review of the emergency regulations is part of this phase of the proceeding.

III. THE PROPOSED REGULATIONS

The Act establishes a comprehensive framework for the restructuring of the electric industry under which competitive suppliers will supply electric power and customers will gain the ability to choose their electric power supplier. The Act directs the Department to promulgate rules and regulations that effect that framework. The proposed regulations, designated as 220 C.M.R. § 11.00 et seq. consist of the following sections governing: the purpose and scope (11.01); the applicable definitions (11.02); transition cost recovery (11.03); distribution company requirements (11.04); competitive supplier and electricity broker requirements (11.05); information disclosure requirements (11.06); and complaint resolution procedures (11.09). The proposed regulations are attached to this Order as Attachment A.

The proposed information disclosure requirements provide for disclosure of information on the resource characteristics of a Competitive Supplier's resource portfolio. The Department expects, however, that this disclosure mechanism will be modified as the generation market evolves and the Independent System Operator develops the technical ability and to provide for independent verification of more detailed and diverse forms of disclosure. The Department

invites suggestions on the format of the information disclosure label. As an example, the Department includes in Attachment B the label format proposed by the Division of Energy Resources. However, the Department's inclusion of this example should not be construed as an endorsement.

The Department's proposed regulations on competitive supplier and electricity broker requirements include the recently issued emergency regulations on licensing of such entities, renumbered as 220 C.M.R. § 11.05(2). The Department has proposed two additional licensing requirements. First, any applicant that intends to bill its customers directly must include in its application a sample bill for Department review. Second, the Department requires applicants to submit an original and two copies of the application and diskette formatted for WordPerfect or Microsoft Word.

In addition to any general comments on the emergency regulations, the Department invites interested persons to comment on the value, if any, and feasibility of requiring applicants to state, under the pains and penalties of perjury, whether any officer, director, partner, or similar other official has, in the five years preceding the application for a license, been convicted of a felony or misdemeanor involving commercial or business fraud. A parallel concept is found in alcoholic beverage licensing. See G.L. c. 138, §§ 12 and 15.

VI. THE DEPARTMENT'S SOLICITATION OF COMMENTS

The Department solicits general comments on the proposed regulations, including the emergency regulations, and on the specific issues raised by the Department in this Order. The Department invites interested persons with similar interests to submit joint comments. Interested

persons may file comments and/or alternative rules for our consideration in adopting final rules. Commenters may submit alternative rules as a redline/strikeout version of the Department's proposed regulations. The Department's proposed regulations are available on the Department's home page: http//www.magnet.state.ma.us/dpu/. All comments and alternative rules shall be filed with Mary L. Cottrell, Secretary, Department of Telecommunications and Energy, 100 Cambridge Street, 12th Floor, Boston, Massachusetts 02202, on or before 5:00 P.M. on January 30, 1998. The Department does not anticipate the need for reply comments. Final regulations will be filed with the Secretary of State on February 20, 1998, for publication and effect on March 6, 1998.

Interested persons are required to submit twelve (12) copies of their comments and/or alternative regulations and are encouraged to submit their filings on a diskette formatted for

WordPerfect or Microsoft Word. Interested persons are not required to serve copies of their filings to the persons on the service list. All filings will be available for public inspection at the Department during regular business hours.

By Order of the Department,

Janet Gail Besser, Acting Chair

John D. Patrone, Commissioner

James Connelly, Commissioner

ATTACHMENT A

220 CMR 11.00: RULES GOVERNING THE RESTRUCTURING OF THE ELECTRIC INDUSTRY

Section

11.01: Purpose and Scope.

(1) Purpose. 220 CMR 11.00 establishes the rules that will govern the restructuring of the electric industry and will apply thereafter to the restructured electric industry in the Commonwealth. Their purpose is to provide a regulatory framework for an efficient industry structure that will minimize long-term costs to consumers while maintaining the safety and reliability of electric services with minimum impact on the environment.

(2) Scope. 220 CMR 11.00 applies to the Distribution Companies, Competitive Suppliers and Electricity Brokers that will participate in the electric industry in the Commonwealth, including the following Distribution Companies and their successors or assigns:

(a) Boston Edison Company
(b) Cambridge Electric Light Company
(c) Commonwealth Electric Company
(d) Eastern Edison Company
(e) Fitchburg Gas and Electric Light Company
(f) Massachusetts Electric Company
(g) Nantucket Electric Company
(h) Western Massachusetts Electric Company

11.02: General Definitions

For the purposes of this Section, the terms set forth below shall be defined as follows, unless the context otherwise requires.

Aggregator means an entity that groups together electricity customers for retail sale purposes, except for public entities, quasi-public entities or authorities, or subsidiary organizations thereof, established pursuant to the laws of the Commonwealth.

Applicant means any entity required by the General Laws or by these regulations to file for licensure as a Competitive Supplier or Electricity Broker.

Bill means a written statement from a Distribution Company or a Competitive Supplier to its Customer setting forth, for the billing period identified in the Distribution Company's tariff, (a) the amount of electricity consumed or estimated to have been consumed; (b) charges for Generation, Transmission, and Distribution Services, as appropriate; (c) the Transition Charge, as appropriate; and (d) any other charges approved by the Department.

Capacity means the load for which a generating unit, generating station, or other electrical apparatus is rated either by the user or by the manufacturer.

Competitive Supplier means an entity, including but not limited to a Generation Company or Aggregator, that produces, purchases or otherwise takes title to electricity and sells it to Retail Customers, with the following exceptions: (a) a Distribution Company providing Standard Offer Service and Default Service to its Distribution Customers; and (b) a municipal light department that is acting as a Distribution Company.

Contract Termination Fee means the fee owed by the Distribution Company to its wholesale power supplier, as determined and approved by the Department.

Default Generation Service means the service provided by the Distribution Company to a Customer who is not receiving either Generation Service from a Competitive Supplier or Standard Offer Generation Service, in accordance with the provisions set forth in the Distribution Company’s Default Service tariff on file with the Department.

Demand-Side Management ("DSM") means any technology, measure, or action designed to decrease the kilowatt or kilowatthour use, or to alter the time pattern of that use by consumers of electricity.

Department means the Department of Telecommunications and Energy.

Distributed Generation means a Generation Facility or Renewable energy facility connected directly to Distribution Facilities or to Retail Customer facilities that alleviates or avoids transmission or distribution constraints or the installation of new Transmission Facilities or Distribution Facilities.

Distribution Company means a company engaging in the distribution of electricity or owning, operating, or controlling Distribution Facilities; provided, however, a Distribution Company shall not include any entity which owns or operates plant or equipment used to produce electricity, steam, and chilled water, or any affiliate engaged solely in the provision of such electricity, steam, and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and non-profit educational institutions, and where such plant or equipment was in operation prior to January 1, 1986.

Distribution Customer means a recipient of Distribution Service provided by a Distribution Company.

Distribution Facility means plant or equipment used for the distribution of electricity and which is not a Transmission Facility, a cogeneration facility, or a small power production facility.

Distribution Service means the delivery of electricity to the Customer by the Distribution Company over lines that operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts.

Electric Company means a corporation organized under the laws of the Commonwealth for the purpose of making electricity by means of water power, steam power or otherwise and selling, or distributing and selling, or only distributing, such electricity within the Commonwealth, or authorized by special act so to do, even though subsequently authorized to make or sell gas; provided, however, that Electric Company shall not mean an alternative energy producer.

Electric Rate Reduction Bonds means bonds, notes, certificates of participation or beneficial interest, or other evidence of indebtedness or ownership, issued pursuant to an executed indenture, financing document, or other agreement of the financing entity, secured by or payable from Transition Property, the proceeds of which are used to provide, recover, finance, or refinance Transition Costs or to acquire Transition Property and that are secured by or payable from Transition Property.

Electric Service means the provision of Generation, Transmission, Distribution, or ancillary services.

Electrical Load shall be as defined in the New England Power Pool Agreement

Electricity Broker means an entity, including but not limited to an Aggregator, that facilitates or otherwise arranges for the purchase and sale of electricity to Retail Customers, but does not produce, purchase, or otherwise take title to any of the electricity purchased or sold. Public Aggregators shall not be considered Electricity Brokers.

Energy means the amount of electricity used over a period of time, typically measured in kilowatthours.

Energy Efficiency means the implementation of an action, policy, or measure which entails the application of the least amount of energy required to produce a desired or given output.

FERC means the Federal Energy Regulatory Commission.

Financing Entity means (a) the Massachusetts Industrial Finance Agency and the Massachusetts Health and Educational Facilities Authority acting jointly pursuant to a mutual agreement, (b) any special purpose trust, or (c) any financing entity which is authorized by the Department pursuant to a Financing Order to issue Electric Rate Reduction Bonds or acquire Transition Property.

Financing Order means an order of the Department that includes, without limitation, a procedure to review and approve periodic adjustments to Transition Charges to include a recovery of principal and interest and the costs of issuing, servicing, and retiring Electric Rate Reduction Bonds contemplated by the Financing Order.

Generation Company means an entity engaged in the business of producing, manufacturing, or generating electricity.

Generation Facility means plant or equipment that is used to produce, manufacture, or otherwise generate electricity and that is not a Transmission Facility.

Generation Service means the sale of electricity, including ancillary services such as the provision of reserves, to a Customer by a Competitive Supplier.

Interconnection Standards means the criteria that govern the connection of Generation Facilities to Distribution Facilities.

Known Resources shall mean resources identified in 220 CMR 11.06(2)(d)(1)(c).

Load-serving Entity means any entity selling electricity to retail customers in the Commonwealth, including Competitive Suppliers and Distribution Companies providing Standard Offer Generation Service or Default Generation Service.

Low-income Customers means those Customers who meet the low-income eligibility qualifications as set forth in 220 CMR 11.04(5).

MHEFA means the Massachusetts Health and Educational Facilities Authority, established by St. 1968, c. 614.

MIFA means the Massachusetts Industrial Finance Agency, established pursuant to G.L. c. 23A, § 31.

Mitigation means all actions or occurrences that reduce the amount of money that a Distribution Company seeks to collect through the Transition Charge, including those amounts resulting both from matters within the Distribution Company's control and from matters not wholly within its control. Mitigation, in accordance with G.L. c. 164, §1G, includes, but is not limited to, the following: (1) sales of Capacity, Energy, ancillary services, reserves, and emission allowances from Generating Facilities that are wholly or partly owned by the company; (2) sales of Capacity, Energy, ancillary services, reserves, and emission allowances from Generating Facilities with which the Distribution Company has a purchased power agreement; (3) adjustments to the company's minimum obligations under purchased power agreements that decrease such obligations, such as those that may be obtained through contract buy-out or renegotiation; (4) Residual Value; (5) sales and voluntary write-downs of company generation-related assets; (6) any market value in excess of net book value associated with the sale, lease, transfer, or other use of the assets of the Distribution Company unrelated to the provision of Transmission Service or Distribution Service at regulated prices, including, but not limited to, rights-of-way, property, and intangible assets when the costs associated with the acquisition of those assets have been reflected in the Distribution Company's rates for regulated service; provided, however, that their market values are based on the highest prices that such assets could reasonably realize after an open and competitive sale; and (7) any allowed refinancing of stranded assets or other debt obligations as provided by law.

NEPOOL means the New England Power Pool and its successors or affiliates.

New England Region means the geographic area consisting of the states Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Public Aggregator means a municipality or group of municipalities that groups Retail Customers to facilitate or otherwise arrange the purchase and sale of electricity pursuant to G.L. c. 164, § 134.

Renewable Resources means a type of Generation Facility or energy source including either (a) resources whose common characteristic is that they are nondepletable or are naturally replenishable but flow-limited, or (b) existing or emerging non-fossil fuel energy sources or technologies, which have significant potential for commercialization in New England and New York, and includes the following: solar photovoltaic or solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; and low-emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel,

or organic refuse-derived fuel. The following technologies or fuels shall not be considered Renewable Resources: coal, oil, natural gas except when used in fuel cells, and nuclear power.

Reimbursable Transition Cost Amount means the total amount authorized by the Department in a Financing Order to be collected through the Transition Charge and allocated to a Distribution Company in accordance with a Financing Order.

Residual Value means the value of Electric Company assets, not including the income that may be obtained through Generation Facility operation.

Retail Access means the use of Transmission and Distribution Facilities owned by a Transmission Company or a Distribution Company to transmit or distribute electricity from a Competitive Supplier to Retail Customers.

Retail Access Date means March 1, 1998.

Retail Customer or Customer means a customer that purchases electricity for its own consumption and not for resale in whole or in part.

Securitization means the use of rate reduction bonds to refinance debt and equity associated with Transition Costs pursuant to G.L. c. 164.

Service Territory means the service territory actually served by the Distribution Company on July 1, 1997 and following to the extent possible municipal boundaries.

Settlement Resource shall be as defined in the New England Power Pool Market Rules and Procedures.

Special Purpose Trust means any trust, partnership, limited partnership, association, corporation, nonprofit corporation, limited liability company, or other entity established and authorized by MIFA and MHEFA to acquire Transition Property or to issue rate reduction bonds, or both, subject to approvals by MIFA and MHEFA and the powers of MIFA and MHEFA as provided by MIFA and MHEFA in their resolutions authorizing the entities to issue rate reduction bonds.

Standard Offer Generation Service means the service provided by the Distribution Company for a term of seven years after the Retail Access Date, in accordance with 220 CMR 11.04.

System Power shall mean resources identified in 220 CMR 11.06(2)(d)(1)(d).

Transition Charge means the charge that provides the mechanism for recovery of Transition Costs.

Transition Costs means the costs that remain after accounting for maximum possible mitigation, subject to determination by the Department.

Transition Property means the property right created pursuant to G.L. c. 164, § 1H, including, without limitation, the right, title, and interest of an electric company or a financing entity to all revenues, collections, claims, payments, money, or proceeds of or arising from or constituting Reimbursable Transition Costs Amounts that are the subject of a Financing Order, including those non-bypassable rates and other charges that are authorized by the Department in the Financing Order to recover Transition Costs and the costs of providing, recovering, financing, or refinancing the Transition Costs, including the costs of issuing, servicing, and retiring Electric Rate Reduction Bonds.

Transmission Company means a company engaged in the Transmission of electricity or owning, operating, or controlling Transmission Facilities.

Transmission Facility means plant or equipment used to provide Transmission Service.

Transmission Service means the delivery of electricity over lines that operate at a voltage level typically equal to or greater than 69,000 volts from generating facilities across interconnected high voltage lines to where it enters a Distribution system.

Unbundled Rates means rates designed to separate the costs of providing Generation Service, Transmission Service, Distribution Service, and Transition Charges.

Unit Contract shall be as defined in the New England Power Pool Agreement.

Wholesale Customer means a customer that purchases electricity for sale at retail.

Wholesale Generation Company means a company engaged in the business of producing, manufacturing, or generating electricity for sale at wholesale only.

11.03: Transition Cost Recovery

(1) Filing Requirements. No Transition Costs may be collected by a Distribution Company unless the collection of those costs has been approved by the Department. In order to recover eligible Transition Costs, a Distribution Company must file an application for review and approval with the Department, that includes the following information:

(a) Documentation that the Distribution Company has filed on or before March 1, 1998, a plan to provide all of its Retail Customers the ability to purchase electricity from a Competitive Supplier as of March 1, 1998;

(b) Documentation that the Distribution Company, through the applicable Electric Company, has developed and will implement a plan to divest itself of its portfolio of all non-nuclear Generation assets by August 1, 1999;

(c) Documentation that the plan formulated pursuant 220 CMR 11.03(1)(a) provides a Standard Offer Generation Service rate and rate reduction as required pursuant to 220 CMR 11.04;

(d) Identification of the following costs, incurred prior to January 1, 1996, for which the Distribution Company seeks recovery pursuant to G.L. c. 164, § 1G(b)(1):

1. The amount of any unrecovered fixed costs for Generation-related assets and obligations;

2. The amount of any previously incurred or known liabilities related to nuclear decommissioning and post-shutdown obligations associated with nuclear power plants;

3. The unrecovered amount of the reported book balances of existing generation-related regulatory assets; and

4. The amount by which the costs of existing purchased power contract commitments exceed the competitive market price for electricity, or the amount necessary to liquidate such contracts.

(e) Identification of the following costs, incurred after January 1, 1996, for which the Distribution Company seeks recovery pursuant to G.L. c. 164, § 1G(b)(2):

1. Employee-related Transition Costs;

2. Any payment of taxes or payments in lieu of taxes made pursuant to G.L. c. 59 § 38H; and

3. Any costs to remove and decommission retired structures at fossil fuel-fired generation facilities required pursuant to G.L. c. 164, § 1A (b)(2).

(f) Documentation that the Distribution Company has taken all reasonable steps to mitigate to the maximum extent possible the total amount of Transition Costs for which recovery is sought pursuant to G.L. c. 164, §1G; and

(g) Documentation that the company's recovery of Transition Costs is net of the value in excess of book value for any company assets not classified to the transmission or distribution function.

(2) Mitigation.

(a) General Mitigation Requirements. Each Distribution Company seeking to recover Transition Costs pursuant to this section shall, in accordance with the provisions of this section, mitigate any such Transition Costs pursuant to G.L. c. 164, § 1G(d). Mitigation efforts in which a Company shall engage shall include, but not be limited to, the following:

1. The divestiture of non-nuclear Generation Facilities pursuant to G.L. c. 164, § 1A;

2. Good-faith efforts to renegotiate, restructure, reaffirm, terminate, or dispose of existing contractual commitments for purchased power pursuant to G.L. c. 164, § 1G(d)(1)(ii) and G.L. c. 164, § 1G(d)(2);

3. An examination and analysis of the historic level of performance over the life of such contractual commitments for purchase power, regardless of whether they exceed the competitive market price for electricity;

4. The netting against above-market costs any below-market assets other than those assets classified to the distribution or transmission function; and

5. Any other Mitigation and analytical activities which the Department determines to be reasonable and effective mechanisms for reducing identifiable Transition Costs.

(b) Company Asset Valuation.

1. If an Electric Company chooses to divest itself of its existing non-nuclear Generation Facilities, pursuant to G.L. c. 164, § 1A(b)(2), such Electric Company shall transfer or separate ownership of Generation, Transmission, and Distribution Facilities consistent with G.L. c. 164, § 1A(b). The Distribution Companies shall be prohibited from selling,

leasing, renting, or otherwise transferring all or a portion of any assets it obtains from the Electric Company pursuant to G.L. c. 164, § 1A(b) without the expressed approval of the Department.

(a) In the event that an Electric Company chooses to sell its existing Generation Facilities, such Electric Company shall demonstrate to the Department that the sale process is equitable and maximizes the value of the existing Generation Facilities being sold. All proceeds from any divestiture of Generation Facilities, net of tax effects and less any other adjustments approved by the Department that inure to the benefit of Customers, shall be applied to reduce the amount of the selling company's Transition Costs.

(b) If an Electric Company chooses not to sell its existing non-nuclear Generation Facilities, then the Electric Company shall transfer all of its non-nuclear Generation Facilities and purchased power contracts to an affiliate that is a Generation Company, and shall value its nuclear and non-nuclear Generation Facilities and its purchased power contracts in accordance with G.L. c. 164, § 1A(c).

2. An Electric Company that chooses not to divest all of its non-nuclear Generation Facilities shall subject its nuclear and non-nuclear Generation Facilities and purchased power contracts to a valuation pursuant to G.L. c. 164, § 1A(c). Should any Generation Facility transferred by the Electric Company to an unregulated affiliate or subsidiary be further sold, transferred to, or disposed of, to a third party within 48 months of the Generation Facility's transfer to an unregulated affiliate or subsidiary of the Electric Company, then any amount recovered in such a sale, transfer, or disposition in excess of the remaining net book value of the Generation Facility shall be applied to reduce the amount of the selling company's Transition Costs.

3. In the event that an Electric Company with Generation Facilities in the Commonwealth owns, or has an affiliate that owns, Generation Facilities in another state in the New England region, and the Electric Company chooses not to divest its existing fossil-fuel fired Generation Facilities and its existing hydroelectric Generation Facilities, the facilities shall be valued in accordance with G.L. c. 164, § 1A(d).

4. An Electric Company that fails to commence and complete the divestiture of its non-nuclear Generation assets shall not be eligible to

benefit from the Securitization provisions and the issuance of Electric Rate Reduction Bonds pursuant to G.L. c. 164, § 1H.

(c) Purchased Power Contracts. Pursuant to the provisions of G.L. c. 164, § 1G(d)(1)(ii), and G.L. c. 164, § 1G(d)(2), an Electric Company and the sellers under its purchased power contracts shall make good-faith efforts to renegotiate those contracts that contain a price for electricity that is above-market as of March 1, 1998. For the purpose of this section, the standard of good-faith shall not require either party to agree to a proposal or require the making of concessions, but shall require active participation in negotiations and a willingness to make reasonable concessions in order to equitably mitigate Transition Costs, and to provide justification for proposals, and shall demonstrate a sincere effort to reach agreement. Beginning July 1, 1998, and at least annually thereafter, a Distribution Company shall file information with the Department demonstrating whether or not each of the purchased power contracts contain a price for electricity that is above-market as of the date of review. If the prices in such contract are determined to be above-market, the Distribution Company and the seller under such contract shall, in accordance with the provisions of G.L. c. 164, § 1G(d)(2)(i), attempt to make a good-faith effort to renegotiate such contract in order to achieve further reductions in the Transition Charge.

(d) Securitization. Each Distribution Company seeking approval to securitize Transition Costs pursuant to G.L. c. 164, § 1H must include in its filing:

1. Documentation of fully mitigated Transition Costs as approved by the Department;

2. Documentation that savings derived from Securitization will inure to the benefit of the Distribution Company's Customers;

3. Written commitments that purchasers of divested operations will offer employment to impacted employees;

4. Documentation that the Distribution Company has established, with the approval of the Department, an order of preference for use of bond proceeds such that the Transition Costs having the greatest impact on customer rates will be first to be reduced by the proceeds;

5. Identification of financial entity to provide Securitization;

6. Specification that the amounts collected from the Distribution Company's Customers shall be allocated first to current and past due Transition Charges and then other charges and that, upon the issuance of the Electric Rate Reduction Bond, Transition Charges collected shall be allocated first to Transition Property and second to Transition Charges, if any that are not subject to a Financing Order; and

7. Stipulation that Transition Charges be paid over to the Financing Entity within one calendar month of collection.

(3) Transition Charge Calculation and Department Review.

(a) The Department shall review Company Transition Cost filings to ensure that they comply with the provisions of G.L. c. 164, §§ 1A, 1G, and 1H.

(b) The Department may allow any approved Transition Costs to be recovered from a Distribution Company's Customers through a non-bypassable Transition Charge in accordance with G.L. c. 164, § 1G(e).

(c) For purposes of the computation of any carrying costs that the Department may determine to allow in a Transition Charge calculation, the cost of equity component of any such computation shall be determined in accordance with G.L. c. 164, § 1G(b)(3).

(d) The Department shall determine whether an exit fee may be charged to a Retail Customer that reduces purchases of electricity through the operation of, or purchases from, on-site generation or cogeneration equipment in accordance with the provisions of G.L. c. 164, § 1G(g)

(e) Periodic review and reconciliation of the Transition Costs and Transition Charge of a company by the Department shall be conducted in accordance with the provisions of G.L. c. 164, §§ 1A(a) and 1G(a)(2).

11.04: Distribution Company Requirements

(1) Purpose and Scope.

(a) Purpose. This section establishes the rules of procedure by which Distribution Companies shall (1) provide Distribution Service to Distribution Customers in their Service Territories, (2) provide Electric Service to Low-income Customers in their Service Territories, (3) provide funding for Renewable Resources; (4) provide Energy Efficiency and DSM services to Retail Customers in their Service Territories; (5) provide Standard Offer Generation Service and

Default Generation Service to Retail Customers in their Service Territories that are not receiving Generation Service from a Competitive Supplier, (6) bill Retail Customers in their Service Territories, and (7) terminate Electric Service to Retail Customers for non-payment of bills.

(b) Scope. These rules apply to all Distribution Companies subject to the jurisdiction of the Department.

(2) Distribution Service.

(a) Each Distribution Company shall have the exclusive obligation to provide Distribution Service to all Customers within its Service Territory. No other entity may provide Distribution Service within such Service Territory without the written consent of the Distribution Company. Such consent shall be filed with the Department and the clerk of the municipality so affected.

(b) Each Distribution Company shall file, for Department approval, a Distribution Service tariff for each rate class.

(c) Each Distribution Company shall file, for Department approval, terms and conditions governing the manner in which Distribution Service is provided to its Distribution Customers. These terms and conditions shall be consistent with the Model Terms and Conditions for Distribution Service established by the Department.

(3) Transmission Service. Each Distribution Company shall file, for Department approval, a Transmission Service tariff for each rate class.

(4) Interconnection Standards. Each Distribution Company shall establish non-discriminatory Interconnection Standards so that all Generation Facilities have fair access on reasonable terms to the Company's Distribution Facilities. The Interconnection Standards shall be on file at the Department.

(5) Low-income Customer Tariff.

(a) Each Distribution Company shall file a Low-income Customer Tariff that shall provide a level of discount for Low-income Customers equivalent to the discount provided under its low-income tariff in effect prior to March 1, 1998. The discount shall be in addition to any reduction in rates provided by the Distribution Company on or after March 1, 1998. The discount shall be provided to Low-income Customers through a reduction in the Distribution Service and Transition Charge to which such Customers would otherwise be subject.

(b) Each Distribution Company shall establish Customer eligibility for its Low-income Customer Tariff based on a Customer's receipt of any means-tested public benefit program or a Customer's receipt of the low-income home energy assistance program or its successor program, for which eligibility does not exceed 175 percent of the federal poverty level based on a household's gross income or other criteria approved by the Department.

(c) Each Distribution Company shall periodically notify all Customers of the availability of and method of obtaining service on the Low-income Customer Tariff.

(d) Each Distribution Company shall allocate to other rate classes the projected revenue deficiency resulting from the Low-income Customer Tariff using an allocation method approved by the Department for the Distribution Company.

(e) Each Distribution Company shall guarantee payment to Competitive Suppliers for Generation Service provided to its Low-income Customers in the event of non-payment by such Customers, where non-payment shall be determined consistent with 220 CMR 11.05(3)(c). Upon determination that a Low-income Customer has failed to pay the amount owed to the Competitive Supplier, the Distribution Company shall pay the Competitive Supplier, except that such payment shall not exceed the prices that the Distribution Company charges to Customers for Standard Offer Generation Service. The Distribution Company shall guarantee payment only for the period of time prior to the earliest date that the Competitive Supplier could have terminated Generation Service, in accordance with 220 CMR 11.05(3)(c) and the Distribution Company's terms and conditions for Competitive Suppliers.

(6) Farm Discount. Each Distribution Company shall provide Customers who meet the eligibility requirements for being engaged in the business of agriculture or farming, as defined pursuant to G.L. c. 128, § 1A, a 10 percent reduction in the rates to which such Customers would otherwise be subject.

(7) Renewable Resources.

(a) Purpose. The purpose of this section is to establish the means by which the Department's goals of customer choice, minimal environmental impact, and resource diversity will be advanced in a restructured electric industry through the availability to customers of energy from Renewable Resources.

(b) Funding of Renewable Resources.

1. Funding Levels. Each Distribution Company shall collect a charge to support the Massachusetts Renewable Energy Trust Fund beginning March 1, 1998, in accordance with the following schedule of charges per kilowatthour: $0.00075 in 1998; $0.001 in 1999; $0.00125 in 2000; $0.001 in 2001; $0.00075 in 2002; and $0.0005 in each calendar year thereafter. The revenues generated by this charge shall be remitted to the Massachusetts Technology Park Corporation.

2. Public Purpose. The public purpose of this fund shall be to generate the maximum economic and environmental benefits over time from Renewable energy to the ratepayers of the Commonwealth by promoting the increased availability, use, and affordability of renewable energy.

(c) Availability of Information. Each Distribution Company shall make any and all non-proprietary information that it has obtained on Renewable Resources and emerging energy technologies available to its Customers upon request.

(d) Net Metering. A customer of a Distribution Company with an on-site Generation Facility of 60 kilowatts or less in size has the option to run the meter backward and may choose to receive a credit from the Distribution Company equal to the average market price of generation per kilowatthour in any month during which there was a positive net difference between kilowatthours generated and consumed. Such credit would appear on the following month's bill. Distribution Companies shall be prohibited from imposing special fees on net metering Customers, such as backup charges and demand charges, or additional controls, or liability insurance, as long as the Generation Facility meets the Interconnection Standards and all relevant safety and power quality standards. Net metering customers must still pay the minimum charge for Distribution Service (as shown in an appropriate rate schedule on file with the Department) and all other charges for each kilowatthour delivered by the Distribution Company in each billing period.

(8) Energy Efficiency

(a) Purpose. This section establishes a funding mechanism to support Distribution Company-provided Energy Efficiency and Demand-Side Management services.

(b) Funding of Energy Efficiency Services. Energy Efficiency services provided by a Distribution Company to Customers shall be funded by a charge to be collected beginning on March 1, 1998, according to the following schedule of charges per kilowatthour: $0.0033 in 1998; $0.0031 in 1999; $0.00285 in 2000; $0.0027 in 2001; and $0.0025 in 2002. In each year, at least 20 percent of

residential DSM expenditures, and in no event less than 0.25 mills per kilowatthour, which charge shall also be continued in the years subsequent to 2002, shall be spent on comprehensive DSM programs and education for Low-income Customers.

(c) Department Review. The Division of Energy Resources shall annually file a report with the Department on the proposed funding levels for energy efficiency programs. The Department shall review and approve energy efficiency expenditures after determining that implementation of such programs was cost-effective.

(d) Availability of Information.

1. Each Distribution Company shall make any and all non-proprietary information that it has obtained regarding energy efficiency technologies, measures, or practices available to its Customers upon request.

2. Each Distribution Company shall make provisions to ensure confidentiality for those Customers who indicate that their Customer-specific energy efficiency information is to remain confidential.

(9) Standard Offer Generation Service and Default Generation Service.

(a) Each Distribution Company shall have the obligation to provide Standard Offer Generation Service and Default Generation Service to Customers within its Service Territory who are not receiving Generation Service from a Competitive Supplier, consistent with the provisions set forth in 220 CMR 11.04(9)(b) and (c).

(b) Standard Offer Generation Service.

1. Term. Standard Offer Generation Service shall be available for a period of seven years after the Retail Access Date.

2. Availability

(a) Standard Offer Generation Service shall be available to each Customer within a Distribution Company's Service Territory who (1) was a Customer of the Distribution Company as of the Retail Access Date, and (2) has not received Generation Service from a Competitive Supplier since the Retail Access Date.

(b) A Customer receiving Standard Offer Generation Service shall be allowed to retain such service upon moving within a Distribution Company's Service Territory.

(c) A Customer who moves into a Distribution Company's Service Territory after the Retail Access Date is not eligible to receive Standard Offer Generation Service, except that a Low-income Customer who moves into a Distribution Company's Service Territory after the Retail Access Date shall be eligible for Standard Offer Generation Service.

(d) A Customer who has received Generation Service from a Competitive Supplier since the Retail Access Date is not eligible to receive Standard Offer Generation Service, except that (1) a Low-income Customer may receive Standard Offer Generation Service at any time, regardless of whether the Customer previously has received Generation Service from a Competitive Supplier; (2) a residential or small commercial and industrial Customer who has received Generation Service from a Competitive Supplier since the Retail Access Date is eligible to receive Standard Offer Generation Service by so notifying the Distribution Company within 120 days of the date when the Customer first began to receive Generation Service from a Competitive Supplier, provided that such notification occurs during the first year following the Retail Access Date; and (3) a Customer who has received Generation Service pursuant to an agreement with a Public Aggregator is eligible to receive Standard Offer Generation Service by so notifying the Distribution Company within 180 days of the date when the Customer first began to receive Generation Service through such agreement.

3. Rates.

(a) The initial rate(s) for Standard Offer Generation Service shall be set so that, when considered in conjunction with Customers' distribution, transmission, and transition charges, Customers' average rates are reduced by not less than 10 percent from 1997 average rates, as determined by the Department.

(b) As of March 1, 1999, the rate(s) for Standard Offer Generation Service shall be set so that, when considered in conjunction with Customers' distribution, transmission, and

transition charges, Customers' average rates shall increase by not more than the rate of inflation, as determined by the Department.

(c) As of September 1, 1999, the rate(s) for Standard Offer Generation Service shall be set so that, when considered in conjunction with Customers' distribution, transmission, and Transition charges, Customers' average rates are reduced by at least 15 percent from 1997 average rates, as adjusted for inflation.

(d) A Distribution Company that is unable to meet the rate reductions set forth in 220 CMR 11.04(9)(b)(3)(a) and (c) may petition the Department for relief pursuant to G.L. c.164, § 1G(3)(c).

(e) Each Distribution Company shall file, for Department approval, the rates that Customers shall be charged for Standard Offer Generation Service during each year that this service is available.

4. Procurement. Each Distribution Company shall procure electricity for Standard Offer Generation Service through competitive bidding, subject to review by the Department.

5. Terms and Conditions. Each Distribution Company shall file, for Department approval, a tariff for the provision of Standard Offer Generation Service. This tariff shall be consistent with the Model Tariff for Standard Offer Generation Service established by the Department.

6. Fee. There shall be no fee for initiating or terminating Standard Offer Generation Service when the initiation or termination is made concurrent with a scheduled meter read.

(c) Default Generation Service.

1. Availability Default Generation Service shall be available to any Customer who is not receiving either Generation Service from a Competitive Supplier or Standard Offer Generation Service.

2. Rates. The rates for Default Generation Service shall be as established through competitive bidding, but in no case shall they exceed the average monthly market price for electricity, as determined by the Department.

3. Procurement. Each Distribution Company shall procure electricity for Default Generation Service through competitive bidding, subject to review by the Department.

4. Terms and Conditions. Each Distribution Company shall file, for Department approval, a tariff for the provision of Default Generation Service. This tariff shall be consistent with the Model Tariff for Default Generation Service established by the Department.

(d) Low-income Customers. Each Distribution Company shall make a determination whether a Low-income Customer shall be placed on Standard Offer Generation Service or Default Generation Service based on which service has the lower rate, unless otherwise indicated by the Customer. This determination shall be made at the time the service is initiated.

(e) Terms and Conditions for Competitive Suppliers. Each Distribution Company shall file, for Department approval, terms and conditions that will govern the relationship between the Distribution Company and Competitive Suppliers providing Generation Service to Customers in the Distribution Company's Service Territory. These terms and conditions shall be consistent with the Model Terms and Conditions for Competitive Generation Service established by the Department.

(10) Billing and Payment.

(a) Each Distribution Company shall bill its residential Customers in accordance with the Billing and Termination Procedures set forth at 220 CMR 25.00.

(b) Each Distribution Company shall issue a single bill, reflecting unbundled charges for Electric Service, to each Customers in its Service Territory receiving Standard Offer Generation Service or Default Generation Service.

(c) Each Distribution Company shall offer two billing options to a Customer receiving Generation Service from a Competitive Supplier: (1) passthrough billing, under which the Customer would receive one bill for Distribution Service, Transmission Service (if appropriate), and the Transition Charge from the Distribution Company and a second bill for Generation Service from the Competitive Supplier; and (2) complete billing, under which the Customer would receive a single bill from the Distribution Company for Distribution Service, Generation Service, Transmission Service (if appropriate), and the Transition Charge.

(d) Each Distribution Company shall inform a Customer when Generation Service for the Customer has been initiated by a Competitive Supplier. This information shall be included on the first Distribution Company bill rendered to the Customer after such initiation.

(e) Each Distribution Company may recover bad debt expenses associated with Distribution Service, Transmission Service, Standard Offer Generation Service, Default Generation Service, and guaranteed payments to Competitive Suppliers for Low-income Customers, incurred as a result of Customers' failure to pay. The amount and method of recovery of such expenses shall be established by the Department in a general rate case.

(f) Each Distribution Company may, as appropriate, require a security deposit from, and impose late payment charges on, commercial and industrial customers in accordance with the terms set forth at 220 CMR 26.00.

(g) Each Distribution Company shall bill condominium common areas and facilities in accordance with the Billing Regulations set forth at 220 CMR 28.00.

(11) Termination Protections.

(a) All residential Customers shall be protected from termination of Electric Service pursuant to 220 CMR 25.00.

(b) Each Distribution Company shall remain responsible for determining eligibility for termination protections pursuant to 220 CMR 25.00 and for administering such protections for Customers within its Service Territory.

(c) Each Distribution Company shall be prohibited from disconnecting or discontinuing service to a Customer for a disputed amount if that Customer has filed a complaint which is pending with the Department, in accordance with 220 CMR 25.02 and 220 CMR 11.07.

(12) Disclosure of Customer Usage Information

(a) Each Distribution Company shall be required to provide a Customer's historic usage information to Competitive Suppliers and Electricity Brokers that have received the required Customer authorization, as established in 220 CMR 11.05(4)(a). The type of usage information shall be as provided below.

1. Demand Customers. For Customers that have been billed at least in part on a demand basis during the 36-month period prior to the release of information, the historic usage information shall include, for the most

recent 12 months, (a) the Energy consumption for each month, and (b) the highest demand level for each month as well as the average monthly demand for the month. The Distribution Company shall indicate if any of the Energy and demand measurements were not based on actual recorded usage, and provide a description of the method used to determine the estimated measurements.

2. Energy-only Customers. For Customers that have been billed on an Energy-only basis during the 36-month period prior to the release of information, the historic usage information shall include the monthly Energy consumption for the most recent 12 months. The Distribution Company shall indicate if any of the Energy measurements were not based on actual recorded usage and provide a description of the method used to determine the estimated measurements.

(b) Each Distribution Company shall be required to provide a Customer's historic usage information to the Customer. Distribution Companies shall be required to exercise best efforts to furnish the data requested by the Customer on a timely basis. At the Distribution Company's election, the data may be provided in writing or electronically; provided, however, that, in the case of an electronic response by the Distribution Company, the Distribution Company shall be allowed to bill the Customer for the incremental cost of providing such electronic record. The Distribution Company shall indicate if any of the usage information were not based on actual recorded usage and provide a description of the method used to determine the estimated usage.

(13) Dispute Resolution. Disputes between a Customer and a Distribution Company shall be resolved in accordance with 220 CMR 25.00 and 220 CMR 11.07.

11.05: Competitive Supplier Requirements

(1) Purpose and Scope. The purpose of this section is to establish the requirements applicable to all Competitive Suppliers and Electricity Brokers and to notify them that a license may be suspended, revoked, or refused renewal for material violation of statute or Department rules.

(2) Licensing Requirements.

(a) Scope. This section governs application for initial license and for renewal of license. This section applies to all Competitive Suppliers and Electricity Brokers, as defined above, doing business in the Commonwealth.

(b) Information Filing Requirements. Before initiating service to Retail Customers, each Applicant shall apply for a license and shall file for review and approval with the Department's Secretary, in such form as is prescribed by the Secretary, a notarized document, signed by two officers of the Applicant, that includes the information identified below, except that an Electricity Broker shall not be required to provide the information described in subdivisions 10 and 14, below:

1. Legal name;
2. Business address;
3. A description of the company's form of ownership. If a corporation, association, or partnership (A) the name of the state where organized, (B) the date of organization, (C) a copy of the Articles of Organization or Incorporation (filed with the Secretary of State under G.L. c. 156B or, if incorporated in another state, by the cognizant approving authority established by law) or Association, partnership agreement, or other similar document regarding legal organization, (D) by-laws, and (E) the name, address and title of each officer and director, partners, or other similar officers;
4. A statement (with appropriate citation to corporate articles or by-laws or other operative documents) that acting as a Competitive Supplier or Electricity Broker is not an *ultra vires* purpose (beyond the scope) of the entity;
5. A summary of any history of bankruptcy, dissolution, merger or acquisition of the entity in the two calendar years immediately preceding application;
6. Name, title, and an 800 or toll-free telephone number of customer service department or contact person available to customers;
7. Name, title, and telephone number of regulatory contact person;
8. Name and address of Resident Agent for Service of Process in Massachusetts for purposes of G.L. c. 223A, § 3;
9. Brief description of the nature of business being conducted, including types of customers to be served and geographic area in which services are to be provided;
10. A statement that the Applicant will comply with the information disclosure regulations promulgated by the Department;
11. Documentation regarding any valid purchased power contract between the Applicant, its affiliates, its parent or subsidiary, and any electric company formed pursuant to the provisions of G.L. c. 164 including documentation that such contracts that are above-market are currently subject to renegotiation pursuant to the provisions of G.L. c. 164, § 1(G)(d)(2), as amended;

12. Documentation of technical ability to generate or otherwise obtain and deliver electricity, or provide other proposed services;
13. Documentation of financial capability (such as the level of capitalization or corporate parent backing) to provide proposed services;
14. Documentation that the Competitive Supplier is a NEPOOL participant or will meet its transaction requirements through a contractual arrangement with a NEPOOL participant. Such documentation may satisfy the requirements set forth in items (12) and (13), above;
15. Evidence or documentation of attendance at a Competitive Supplier training session to be sponsored by the Massachusetts Distribution Companies, as set forth in the Electronic Business Transaction Standards Working Group Report, as amended from time to time, on file with the Department;
16. A sample Bill from those Competitive Suppliers that plan to bill Retail Customers in accordance with the passthrough billing option, as set forth in 220 CMR 11.04(10)(c); and
17. Declaration under penalties of perjury pursuant to G.L. c, 268, § 6, that all statements made in the application are true and complete. The declaration shall include evidence that the declarants are authorized as agents of the Applicant to apply for license on its behalf.

Applicants are required to file an original application, with two copies and a copy on diskette. Within 30 days of any material or organic (G.L. c. 156B) change in the information required, the Applicant shall file updated information with the Department. Any Applicant who knowingly submits misleading, incomplete, or inaccurate information may be penalized in accordance with statute and with the regulations promulgated by the Department.

(c) Fees. Each Applicant shall pay a filing of one hundred dollars to the Department.

(d) Department Review. The Department will review the information described above. The Department will inform the Applicant within 20 business days of submission of a complete application whether the licensing application has been approved or rejected.

(e) Information Disclosure. As a condition of maintaining or renewing a license, each Competitive Supplier shall comply with the requirements of G.L. c. 164, and 220 CMR 11.06 (3)(a) and 11.07(4)(c). Failure to comply with these regulations may result in suspension, revocation, or non-renewal of the Applicant's license.

(3) Billing and Generation Service Termination Requirements. Each Competitive Supplier that bills Retail Customers in accordance with the passthrough billing option described in 220 CMR 11.04(10)(c), shall comply with the Department's regulations set forth in 220 CMR 25.00, 27.00, 28.00, and 29.00 as provided below.

(a) Each Bill issued by a Competitive Supplier to a Retail Customer shall include separate lines for (1) electricity consumption, generation price (rate per kilowatthour), generation cost (total dollar amount owed), and (2) transmission price and transmission cost, when applicable.

(b) A Bill issued by a Competitive Supplier to a Retail Customer shall not be considered "due" under these regulations in less than 45 days from receipt. No disputed portion of the Bill shall be considered "due" if the Customer has filed a complaint which is pending with the Department, in accordance with 220 CMR 25.00 and 220 CMR 11.07.

(c) A Competitive Supplier may terminate Generation Service to a Retail Customer during the term of service only if a Bill is not paid within 48 days from receipt. Prior to termination of Generation Service, the Competitive Supplier shall render a second request for payment not earlier than 27 days after the rendering of the Bill (i.e., the first request for payment). The second request for payment shall state the Competitive Supplier's intention to terminate Generation Service on a date not earlier than 48 days after the Customer's receipt of the Bill. The Competitive Supplier shall render a final notice of termination not earlier than 45 days after the Customer's receipt of the Bill. Such notice shall must be rendered at least 72 hours, but in no event more than 14 days prior to termination of Generation Service. The Competitive Supplier may terminate Generation Service if the Bill remains unpaid on the indicated termination date, except that a Competitive Supplier may not terminate Generation Service to a Customer if the unpaid Bill is the subject of a dispute resolution, in accordance with 220 CMR 25.00 and 220 CMR 11.07.

(d) A Competitive Supplier may terminate Generation Service at the end of the term of the contract for Generation Service.

(4) Customer Authorization Requirements.

(a) Release of Customer Usage Information. Each Competitive Supplier or Electricity Broker must obtain verification that each Customer has affirmatively chosen to allow the release of the Customer's historic usage information to the Competitive Supplier or Electricity Broker, in accordance with 220 CMR 11.05(4)(c).

(b) Initiation of Service by a Competitive Supplier or Electricity Broker.

1. Competitive Supplier. Each Competitive Supplier must obtain verification that each Customer choosing that Competitive Supplier has affirmatively chosen such entity, in accordance with 220 CMR 11.05(4)(c). No Competitive Supplier may initiate Generation Service to a Customer without first obtaining said affirmative choice from the Customer.

2. Electricity Broker. An Electricity Broker must obtain verification that each Customer choosing that Electricity Broker has affirmatively chosen to allow the Electricity Broker to represent the Customer for the purposes of selecting a Competitive Supplier on behalf of the Customer. Such affirmative choice shall be in accordance with 220 CMR 11.05(4)(c).

(c) Affirmative choice. For the purposes of this section, the term "affirmative choice" may be evidenced by (1) a customer-signed Letter of Authorization, (2) Third-party Verification, or (3) the completion of a toll-free call made by the Customer to an independent third party operating in a location physically separate from the telemarketing representative who has obtained the Customer's initial oral authorization to change to a new Competitive Supplier.

1. Letter of Authorization. For the purposes of this section, the term "Letter of Authorization" means a separate document whose sole purpose is to authorize (i) a Competitive Supplier to initiate Generation Service for a Customer or (ii) an Electricity Broker to represent the Customer for the purposes of selecting a Competitive Supplier on behalf of the Customer. The Letter of Authorization must be signed and dated by the Customer and must conform to the specifications in G.L. c. 164, § 1F(8)(a).

2. Third-party verification. For the purposes of this section, the term "Third-party Verification" means an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative who has obtained the Customer's oral authorization to change to a new Competitive Supplier, such authorization to include appropriate verification data, such as the Customer's date of birth and social security number or other voluntarily submitted information; provided, however, any such information or data in the possession of the third party verifier or the marketing company shall not be used, in any instance, for commercial or other marketing purposes, and shall not be sold, delivered, or shared with any other party for such purposes.

(d) Rescission Period. A Competitive Supplier may not initiate Generation service to a Customer choosing the Competitive Supplier prior to midnight on the

third day following the Customer's receipt of a written confirmation of an agreement to purchase electricity and a statement of the terms and conditions of service, as described in 220 CMR 11.06, during which period the Customer shall have the right to rescind, without charge or penalty, his or her affirmative choice of Competitive Supplier.

(5) Conducting business with unauthorized entities. A Distribution Company, Competitive Supplier or Electricity Broker may not do business with any Competitive Supplier or Electricity Broker that has not been licensed by the Department to do business in the Commonwealth pursuant to 220 CMR 11.05 (2).

(6) Security Deposits. A Competitive Supplier or Electricity Broker shall be precluded from requiring security deposits from Retail Customers except as specifically provided for in 220 CMR 26.00 et seq.

11.06: Information Disclosure Requirements

(1) Purpose and Scope.

(a) Purpose. The purpose of this section is to ensure that Customers are presented with consistent, accurate, and meaningful information by which to evaluate services offered by Load-serving Entities.

(b) Scope. This section applies to all Competitive Suppliers and to Distribution Companies as specified in this section.

(2) Information Disclosure Label.

(a) Each Load-serving Entity shall prepare information on a label for each price offering in a form that is consistent for all Load-serving Entities, as determined by the Department. Such label shall be a condition of licensure for Competitive Suppliers pursuant to 220 CMR 11.05(2)(e). The label shall present information in accordance with 220 CMR 11.06(2)(b) through 11.06(2)(e), and shall conform to all applicable rules and regulations of the Attorney General. The label shall be distributed in accordance with 220 CMR 11.06(4).

(b) Price to be charged and price variability. The label shall present the price of generation service as an average unit price in cents per kilowatthour as measured at the customer meter over the course of an annualized period, regardless of actual price structure. This unit price shall be the price for generation services only, and shall not include charges associated with delivery, other Department regulated services, or other non-generation products or services

except as provided below. The label shall contain the following information on average price and price variability.

1. Average price information.

(a) Average prices shall be shown for four levels of use. The average price for each usage level shall be the total charge for generation service for the specified usage level, divided by the kilowatthours for the particular usage level. Average prices shall be rounded to the nearest one tenth of a cent per kilowatthour.

(1) Residential. Average prices for residential consumers shall be shown for usage levels of 250, 500, 1000 and 2000 kilowatthours per month.

(2) Commercial. Average prices for commercial consumers shall be shown for 1,000, 10,000, 20,000 and 40,000 kilowatthours per month.

(b) Average prices for time-of-use and seasonal prices shall be based on load profiles for each customer class for New England.

(c) Average prices for service based on spot or other variable prices shall be shown based on the average prices that would have been charged in the last month of the prior quarter.

(d) Bundled Generation Service. Load-serving Entities that offer Generation Service where electricity is bundled with any other product or service may display the charge for Generation Service either as

(1) The average price for which the Customer can purchase unbundled Generation Service from the Load-serving Entity, or

(2) The average generation price, assuming the entire price of the bundled service is attributable to electricity. If this option is selected the label may include a statement in the same font as subheadings that identifies what is included in the average price.

(e) Inducements. Average prices shall not reflect any adjustment for cash or non-cash sales inducements.

2. Price variability information. If prices vary by time of use or by volume, a subheading shall be printed below the average prices stating one or both of the following:

(a) If prices vary by time of use, including seasonal prices, the statement shall read "Your average electricity price will vary according to when and how much electricity you use. See your most recent bill for your monthly use and the Terms of Service or your bill for actual prices."

(b) If prices vary only by volume of sales, including prices that have a fixed charge and a flat energy charge, the statement shall read "Your average generation price will vary according to how much electricity you use. See your most recent bill for your monthly use and the Terms of Service or your bill for actual prices."

(c) Customer service information. The label shall contain a toll-free number for customer service and complaints.

(d) Fuel, Emissions, and Labor Characteristics. The label shall contain information on the fuel mix, emissions, and labor characteristics associated with the Load-serving Entity's resource portfolio.

1. Determining the Resource Portfolio.

(a) Resource portfolio. The resource portfolio of a Load-serving Entity shall consist of the portfolio of generating resources used to meet that portion of the Load-serving Entity's Electrical Load associated with the kilowatthours delivered to retail customers, kilowatthours of associated electrical losses, and kilowatthours of use by the Load-serving Entity on its own system, as determined in accordance with Section 14.1 of the NEPOOL Agreement and associated market rules. The resource portfolio shall be a pro rata share of (1) a NEPOOL Participant's settlement resources, net of unit contracts sold, plus (2) any energy received due to negative adjusted net interchange, summed for all hours of the label reporting period. Such generating resources shall reflect Known Resources and System Power as discussed below. The resource portfolio shall be determined using market settlement data or equivalent data provided by the Independent System Operator. Resource portfolio information shall be updated on a quarterly

basis. Load-serving Entities shall be responsible for providing resource portfolio data to the Department upon request.

(b) Label reporting period. The label reporting period shall be the most recent one-year period prior to the reporting month for which resource portfolio information has been updated with the following exceptions:

1. If a Load-serving Entity has operated for less than a full year, but more than three months, the Load-serving Entity shall report the information that is available for the portion of the year the Load-serving Entity has operated.

2. If a Load-serving Entity has operated for less than three months, the Load-serving Entity shall report a reasonable estimate of its resource portfolio based on (a) the Load-serving Entity's known generating unit ownership and contracts, and (b) the average regional system mix.

(c) Known Resources: For each hour in which the resource portfolio includes kilowatthours that are associated with specific generating units in which the Load-serving Entity holds unit entitlements or contracts that specify the associated generation units, such kilowatthours shall be deemed to derive from Known Resources. For the purpose of determining fuel mix, emissions, and labor characteristics in 220 CMR 11.06(2)(d)2, 3, and 4, kilowatthours from Known Resources shall be ascribed the characteristics of the associated generating units.

(d) System Power: For each hour in which the resource portfolio includes kilowatthours that are not associated with Known Resources in accordance with 220 CMR 11.06(3)(d)(1)C above, such kilowatthours shall be deemed to derive from System Power. For the purpose of determining fuel mix and emissions in 220 CMR 11.06(3)(d)2 and 3, kilowatthours from System Power shall be ascribed the characteristics of the residual system mix. The residual system mix shall be the mix of generating resources in New England net of Known Resources. Until such time as data is available on the residual system mix, System Power shall be ascribed the average characteristics of kilowatthours from all generating units that operated in New England during the label

reporting period as determined by the Independent System Operator.

(e) Imports: For each hour in which the resource portfolio includes kilowatthours that are associated with imports to New England, characteristics shall be ascribed as follows: kilowatthours that are associated with specific generating units through assignment of unit entitlements or contracts that specify the associated generation shall be considered Known Resources and shall be ascribed the characteristics of those generating units. Kilowatthours that do not derive from Known Resources shall be considered System Power and shall be ascribed the characteristics of the exporting system's mix.

2. Fuel Source Characteristics

(a) Each Load-serving Entity shall determine its resource portfolio in accordance with 220 CMR 11.06(3)(d)1 and shall report on the label the fuel mix of said resource portfolio.

(b) At least the following fuel sources shall be separately identified on the label and listed in alphabetical order: biomass; coal; hydro; municipal solid waste; natural gas; nuclear; oil; solar; wind; and other Renewable Resources (including fuel cells utilizing renewable fuel sources, landfill gas, and ocean thermal). Fuel mix percentages shall be rounded to the nearest full percentage point.

(c) Energy Storage Facilities. The fuel mix associate with an energy storage facility shall be the fuel mix of the energy used as input to the storage device. The characteristics disclosed shall include any losses as a result of storage.

3. Emissions Characteristics

(a) Each Load-serving Entity shall identify its resource portfolio in accordance with 220 CMR 11.06(3)(d)1 and shall report on the label the emission characteristics of said resource portfolio.

(b) For the purpose of emission characteristics disclosure, at least the following pollutants shall be separately identified on the label: carbon dioxide (CO_2), nitrogen oxides (NO_x), sulfur dioxide (SO_2), and, when the Department of Environmental Protection determines that reliable and accurate information becomes available,

heavy metals. The Department shall determine, in consultation with the Department of Environmental Protection, whether additional pollutants should be disclosed.

(c) Emissions for each emission category shall be computed as an annual emission rate in pounds per kilowatthour. For each emission category, the emission rate of the resource portfolio shall be presented as a percentage of a reference emission rate. The reference emission rate shall be the New England regional average emission rate. Said reference emission rate may be modified from time to time by the Department in consultation with the Massachusetts Department of Environmental Protection.

(d) Emission characteristics of the resource portfolio shall be calculated using annual emission rates for each generating facility as identified by the Department in consultation with the Massachusetts Department of Environmental Protection and the United States Environmental Protection Agency. Until such annual emission rates are identified by the Department, the annual emissions rates for a generating unit shall be calculated based on one of the following:

(i) Continuous Emissions Monitoring data for the most recent reporting year divided by net electric generation for the same period;

(ii) Emission factors currently approved or provided by state environmental protection agencies, the United States Environmental Protection Agency, or other appropriate government environmental agency, if Continuous Emissions Monitoring data are not available; or

(iii) If the generating unit has been in operation less than one year: (a) for NO_x and SO_2, permitted emissions levels; and (b) for CO_2, the carbon content of the fuel.

(e) The following types of generating units shall be assigned emissions characteristics as provided in this section:

(i) Energy storage facilities. The emissions associated with an energy storage facility shall be the emissions of the energy used as input to the storage device. The characteristics disclosed shall include any losses as a result of storage.

(ii) Cogeneration facilities may make a reasonable allocation of emissions between electricity production and other useful output based on measured heat balances. Said allocation shall be reviewed by the Department, in consultation with the Department of Environmental Protection.

(iii) The use of offsets associated with facilities that emit CO_2 shall be as determined by the Department, in consultation with the Department of Environmental Protection.

4. Labor Characteristics

(a) Each Load-serving Entity shall determine its resource portfolio in accordance with 220 CMR 11.06(2)(d)1 and shall report on the label the labor characteristics of said resource portfolio.

(b) Load-serving Entities with Known Resources shall be required to determine whether a majority of employees operating at each known generation plant are employed under collective bargaining agreements and, if such plants experienced a labor dispute in the most recent calendar year, whether any replacement workers were hired. For System Power, the information used on the label pertaining to collective bargaining agreements and the use of replacement labor during labor disputes shall be based on the New England region system average in the most recent calendar year available. The labor data on the label shall be based on a kilowatthour weighted average for all specified and System Power.

(e) Format of Information Disclosure Label. The label shall be presented in a format to be determined by the Department.

(3) Terms of Service Requirement. Each Load-serving Entity shall prepare a statement entitled "Terms of Service" as described in this section. The Terms of Service shall be distributed in accordance with 220 CMR 11.06(4), and shall conform to all applicable rules and regulations of the Attorney General. The Terms of Service shall present the following information:

(a) Actual pricing structure or rate design according to which the Customer will be billed, including an explanation of price variability and price level adjustments that can cause the price to vary;

(b) Length and kind of contract;
(c) Due date of bills and consequences of late payment;
(d) Conditions under which a credit agency is contacted;
(e) Deposit requirements and interest on deposits;
(f) Limits on warranty and damages;
(g) Any and all charges, fees, and penalties;
(h) Information on consumer rights pertaining to estimated bills, third-party billing, deferred payments, and rescision of supplier switch within three days of receipt of confirmation;
(i) A toll-free number for service complaints;
(j) Low-income rate eligibility;
(k) Provisions for Default Service;
(l) Applicable provisions of G.L. c.164, §193; and
(m) Method whereby Customer will be notified of changes to items in the terms of service.

(4) Distribution of disclosure label and terms of service. The label and the Terms of Service shall be distributed in accordance with this section as follows:

(a) Prior to initiation of service. Following a Customer's affirmative choice of a Competitive Supplier or initiation of Default Service, the Load-serving Entity shall provide the Customer with the disclosure label prepared pursuant to 220 CMR 11.06(2) and with the statements of the Terms of Service prepared pursuant to 220 CMR 11.06(3). Said documents shall accompany written confirmation of the Customer's agreement to take Electric Service, and the Customer's receipt of said documents shall trigger the three-day rescission period required in 220 CMR 11.05(4)(d).

(b) Monthly billing. Load-serving Entities shall provide the label to retail Customers quarterly.

(c) Upon request. The label and the Terms of Service shall be available to any person upon request.

(5) Annual booklet. Any Competitive Supplier licensed by the Department to do business in the Commonwealth pursuant to 220 CMR 11.05 shall prepare an information booklet describing a Customer's rights under the provisions of G.L. c. 164. Competitive Suppliers shall annually mail this booklet to their Customers.

(6) Information disclosure in advertising.

(a) All advertisements shall comply with state and federal regulations governing advertising, including the Attorney General's regulations, and shall be

consistent with the Federal Trade Commission's guidelines for the use of environmental marketing claims.

(b) A Competitive Supplier shall print the disclosure label prepared pursuant to 220 CMR 11.06(2) in a prominent position in all written marketing materials describing generation service, including newspaper, magazine, and other written advertisements; direct mail materials; and electronically-published advertising including Internet materials. Where Electricity Service is marketed in non-print media, the marketing materials shall indicate that the Customer may obtain the disclosure label upon request.

(c) A Competitive Supplier shall be allowed to advertise the percentage of its resource portfolio that is generated by employers that operate under collective bargaining agreements or that operate with employees hired as replacements during the course of a labor dispute when said percentage is derived from Known Resources as determined in accordance with 220 CMR 11.06(2)(d)1.

(d) A Competitive Supplier shall be allowed to advertise the percentage of its resource portfolio that connotes or signifies to the ratepayer the relative environmentally beneficial effects of the power or energy sold by said supplier under the following circumstance: (1) the percentage is derived from Known Resources as determined in accordance with 220 CMR 11.06(2)(d)1; and (2) the percentage exceeds percentages mandated under any rules promulgated by the Division of Energy Resources pertaining to a renewable portfolio standard and (3) the percentage exceeds levels required for compliance with any other regulatory requirements such as a generation performance standard.

(7) Enforcement. Dissemination of inaccurate information, or failure to comply with the Department's regulations on information disclosure, may result in suspension, revocation, or non-renewal of a Competitive Supplier's license.

11.07: Complaint and Damage Claim Resolution; Penalties

(1) Purpose and Scope.

(a) Purpose. The purpose of this section is to establish the complaint and dispute resolution requirements applicable to Customer complaints or damage claims between Customers and Distribution Companies, Competitive Suppliers, or Electricity Brokers.

(b) Scope. This section applies to all Distribution Companies, Competitive Suppliers, and Electricity Brokers doing business in the Commonwealth.

(2) Liability Claims. A Customer may file a complaint with the Department alleging property damage under one hundred dollars. The Department will refer any such complaints for mediation and/or arbitration. Any claims for damages will be resolved within 60 days from the date the claim was filed with the Department.

(3) Unauthorized Initiation of Generation Service Complaints.

(a) Complaint Procedure.

(1) A Customer may file a complaint with the Department stating that a Competitive Supplier has initiated Generation Service to the Customer, or an Electricity Broker has selected a Competitive Supplier on behalf of the Customer, without first obtaining evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c). The complaint must be filed within 30 days after the statement date of a notice from the Distribution Company indicating that Generation Service has been initiated by the Competitive Supplier.

(2) Within 10 business days of filing the complaint, the Customer will receive from the Department a request asking for the following: a copy of the Customer's bill or notice that included the information regarding the initiation of Generation Service; the name of the original Competitive Supplier or Electricity Broker, if applicable; and any other information the Department deems relevant.

(3) The Customer shall, within 15 business days of the Department's notifying the Customer, respond to the Department's request for information.

(4) Within 15 business days of receiving the requested information from the Customer, the Department will send the following: (i) a letter to the Customer acknowledging receipt of the information; (ii) a letter to the Distribution Company or original Competitive Supplier informing it of the pending complaint and requesting that information relevant to the initiation of Generation Service be furnished; and (iii) a letter informing the new Competitive Supplier or Electricity Broker, if applicable, of the pending complaint, requesting evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c) to initiate Generation Service, and requesting any additional information the Department deems relevant.

(5) The Distribution Company or original Competitive Supplier and the new Competitive Supplier or Electricity Broker, if applicable, shall respond

to the Department's request within 5 business days from the issuance of said requests.

(6) Within 25 business days after receiving evidence of the Customer's affirmative choice and all relevant information as required herein, the Department will determine if the Customer authorized the new Competitive Supplier to initiate Generation Service.

(b) Refunds. If the Department determines that the new Competitive Supplier or Electricity Broker, if applicable, does not possess the required evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c), the Department will require the new Competitive Supplier or Electricity Broker to refund the following: (1) to the Customer, the difference between what the Customer would have paid to the Distribution Company or previous Competitive Supplier and actual charges paid to the new Competitive Supplier; (2) to the Customer, any reasonable expense the Customer incurred in switching back to the Distribution Company or original Competitive Supplier; and (3) to the Distribution Company or original Competitive Supplier, the gross revenue the Distribution Company or original Competitive Supplier would have received from the Customer during the time the Customer received Generation Service from the new Competitive Supplier.

(c) Civil Penalties. Pursuant to G.L. c. 164, § 1F(8)(d), any Competitive Supplier who initiated Generation Service to the Customer or Electricity Broker who selected a Competitive Supplier on behalf of a Customer without first obtaining evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c) one or more times in a 12-month period shall be subject to a civil penalty not to exceed $1,000 for the first offense and not less than $2,000 nor more than $3,000 for any subsequent offense per Customer. In determining the amount of the civil penalty, the Department will consider the nature, circumstances, and gravity of the violation, the degree of the Competitive Supplier or Electricity Broker's culpability, and the Competitive Supplier or Electricity Broker's history of prior offenses.

Pursuant to G.L. c. 164, § 1F(8)(e), any Competitive Supplier who initiated Generation Service to the Customer or Electricity Broker who selected a Competitive Supplier on behalf of a Customer without first obtaining evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c) more than 20 times in a 12-month period may, after a full hearing and determination by the Department that such Competitive Supplier or Electricity Broker intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, be prohibited from selling electricity in the Commonwealth for a period of up to one year. In determining the length of suspension, the Department

will consider the nature, circumstances and gravity of each violation and the degree of culpability of the Competitive Supplier or Electricity Broker.

(4) Other Customer Complaints.

(a) All other complaints brought by a Customer against a Distribution Company, Competitive Supplier or Electricity Broker shall follow the procedures set forth in 220 CMR 25.02(4), except as provided below in 220 CMR 11.07(4)(b).

(b) Alternative Dispute Resolution.

1. Pursuant to G.L. c. 164, § 1F(2), each Distribution Company, Competitive Supplier, and Electricity Broker shall make available to Customers alternative dispute resolution procedures, including mediation, arbitration, facilitation or other dispute resolution procedures.

2. Allegation of Unfair or Deceptive Trade Practice. Pursuant to G.L. c. 164, § 102C, each Distribution Company, Competitive Supplier, and Electricity Broker shall submit to arbitration upon the request of a Customer alleging that an unfair or deceptive trade practice has occurred. The Department also will make a voluntary mediation process available to consenting parties.

3. Alternative dispute resolution pursuant to 220 CMR 11.07(4)(b)(1) and (2) may only be requested after the Customer and Distribution Company, Competitive Supplier or Electricity Broker have attempted to resolve the dispute pursuant to 220 CMR 25.04(a).

(c) Penalties. Each Distribution Company, Competitive Supplier, and Electricity Broker doing business in Massachusetts shall be subject to a range of sanctions for violations of the Department's regulations. Such sanctions may only be imposed following a hearing before the Department in conformance with G.L. c. 30A and 220 CMR 25.00.

1. Licensure Action. In the case of egregious misconduct or a pattern of misconduct, the Department may take licensure action against a Competitive Supplier or Electricity Broker. Such action may result in the Competitive Supplier or Electricity Broker being (i) required to notify existing and prospective Customers of probationary status; (ii) prohibited from signing up new Customers for a specified period of time; and/or (iii) suspended from the list of licensed Competitive Suppliers/Electricity Brokers maintained by the Department.

2. Civil Penalties. Each Distribution Company, Competitive Supplier, or Electricity Broker who violates any regulation promulgated by the Department pursuant to G.L. c. 164, §§ 1A-1F, shall be subject to a civil penalty not to exceed $25,000 for each violation for each day that the violation persists; provided however, that the maximum civil penalty shall not exceed $1,000,000 for any related series of violations. In determining the amount of the penalty, the Department shall consider the following: the appropriateness of the penalty to the size of the business of the person, firm, or corporation charged; the gravity of the violation; and the good faith of the person, firm, or corporation charged in attempting to achieve compliance after notification of a violation, consistent with G.L. c. 164, § 1F(7).

REGULATORY AUTHORITY
220 CMR 11.00: M.G.L. c. 164, c. 25